



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2022-0343; FRL-9709-01-OGC]

### Proposed Consent Decree, Unreasonable Delay Claim Regarding Toxics Release Inventory Listing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with the Environmental Protection Agency (EPA) Administrator's March 18, 2022, Memorandum entitled Consent Decrees and Settlement Agreements to Resolve Environmental Claims Against the Agency, notice is hereby given of a proposed consent decree that resolves *Breast Cancer Prevention Partners, et al. v. U.S. Environmental Protection Agency, et al.*, a case in the United States District Court for the Northern District of California (4:21-cv-07360-HSG) that alleges EPA unreasonably delayed taking final action on its proposed rulemaking to list diisononyl phthalate (DINP) on the Toxics Release Inventory (TRI) pursuant to the Emergency Planning and Community Right-to-Know-Act (EPCRA).

**DATES:** Written comments on the proposed consent decree must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2022-0343 online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments, see the

"Additional Information about Commenting on the Proposed Consent Decree" heading under the

**SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of

caution for members of the public and our staff, the EPA Docket Center and Reading Room is

open to visitors by appointment only. Our Docket Center staff continues to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and faxes. Hand-deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the latest status information, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Wakefield, Pesticides and Toxic Substances Law Office MC-2333A, Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone (202) 564-3186; email address [wakefield.benjamin@epa.gov](mailto:wakefield.benjamin@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Obtaining a Copy of the Proposed Consent Decree**

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2022-0343) contains a copy of the proposed consent decree.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

### **II. Additional Information about the Proposed Consent Decree**

Prior to this lawsuit being filed, EPA received a petition in February 2000 to add a plastic additive called diisononyl phthalate (DINP) to the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 toxic chemical list (*i.e.*, the Toxics Release Inventory (TRI)). EPA issued a proposed regulation to list DINP on the TRI on September 5, 2000. EPA published a Notice of Data Availability (NODA) with a revised hazard assessment for DINP in

the **Federal Register** on June 14, 2005 (70 FR 34437) and invited public comment on the revised assessment.

Plaintiffs filed a Complaint on September 22, 2021, alleging that EPA's failure to conclude the rulemaking it initiated in 2000 constitutes an unreasonable delay under Section 706(1) of the Administrative Procedure Act, 5 U.S.C. 706(1).

This proposed consent decree states that no later than January 31, 2023, EPA shall either sign a final rule that lists DINP on the TRI or sign a notice for publication in the **Federal Register** to withdraw the proposed rulemaking to list DINP on the TRI. The proposed consent decree further states that if the Office of Management and Budget (OMB) determines that a rule to list DINP warrants review under Executive Order 12866 at the supplemental proposal and/or final rule stage, the deadline shall be extended by 90 days for each stage of review that OMB initiates, for a total extension of 180 days if OMB initiates review at both the supplemental proposal and the final rule stages. Court approval of this proposed consent decree would resolve all claims in this case except for any claim for the costs of litigation, including attorneys' fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the APA or EPCRA. Unless EPA or the Department of Justice determines that consent should be withdrawn, the terms of the proposed consent decree will be affirmed.

### **III. Additional Information about Commenting on the Proposed Consent Decree**

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2022-0343 via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's

docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

**Christopher E. Kaczmarek,**  
*Acting Associate General Counsel.*

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